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REPORTS

NOTES OF THE WEEK

Advantage of Publicity

We all know that examining justices need not sit in open court, and most of us recognize the danger that in some cases it seems that newspaper publicity given to the preliminary proceedings when a case excites unusual interest may make it difficult for the members of the jury that ultimately tries the case to approach it with completely unbiased minds. Yet in spite of this it is certain that if it became the practice to conduct the preliminary hearing in private there would be a storm of protest.

Those who favour publicity point to its advantage in letting the general public know what is being said and what is the charge, so that anyone who can throw light on the facts can come forward. This is a sound argument, but actual instances in support of it are, naturally enough, not common. When they do occur they deserve notice.

At the Chester Assizes the prosecution offered no evidence against a man who had pleaded not guilty to two charges of wounding. It was stated that after he had been committed for trial and the proceedings had been reported in the press a woman came forward and made a statement to the police which was quite inconsistent with the evidence of the prosecution. Counsel said this witness was of undoubted integrity, and it was decided not to offer any evidence against the accused, as it would not be right for a jury to be asked to convict. The accused was accordingly acquitted by a jury impanelled then and there.

Tales De Circumstantibus

The case which was reported in the *Liverpool Daily Post* also illustrated the power of calling upon persons not actually summoned, but qualified to serve on a jury to fulfil that duty in case of need. There being no jury already sworn, and presumably none in waiting, a jury was formed of members of the press, officials including a probation officer, and spectators. Upon their formal verdict of not guilty the accused was not merely discharged from custody, but was acquitted, and thereby free from that accusation once and for all.

Trial in Absence

In our note at p. 94, *ante*, we were concerned with the general question of hearings in the absence of the defendant when the charge is one of an indictable offence. We did not, however, discuss an interesting point that has now been raised by a correspondent.

Our correspondent suggests that an order of conditional discharge cannot lawfully be made in the absence of the defendant, since by s. 7 (3) of the Criminal Justice Act, 1948, the court, before making such an order, is required to explain its effect to the defendant, and this it cannot do if he is not present.

This may be so, but it is possible to take a different view. The order is unlike a probation order, which cannot be made without the offender's consent after explanation has been given, and which obviously could not be made unless he was there to express his consent. In the case of an order of conditional discharge the offender is not asked if he consents to the making of the order, and it may be argued that if he chooses not to attend the hearing that fact does not deprive the court of power to make the order, especially as it is not a sentence but is a withholding of sentence and therefore in favour of the defendant. If the court could make an order of absolute discharge or could pass sentence in his absence, it may be said that it would be strange if it could do these things but not make an order which is not a sentence and does not require that he should consent to it. On this basis, it would be submitted that the failure to explain the effect of the order before making it, being a direction as to procedure only, would not affect jurisdiction when that failure is due to the absence by choice of the defendant himself.

Naturally the court, when notifying the defendant of its decision, would then explain the effect of the order.

Which view of the law on this point is correct may perhaps be settled some day by the High Court.

Duration of Approved School Order

A newspaper recently reported that a boy aged nine had been sent to an approved school for six years and

another, aged 10, for five years. It is perfectly true that a boy of nine sent to an approved school may be detained there for six years, but that is not what the court orders or could order. What s. 71 of the Children and Young Persons Act, 1933, states, is that an approved school order made in the case of a child shall be an authority for his detention for three years or until he reaches the age of 15 years and four months, whichever is the longer period. All the court does is to order him to be sent to a school, and it cannot specify how long he is to be detained: that depends on his conduct and other circumstances affecting the question of licensing.

This is a matter of some importance, because a child and his parent should be given a true picture of the position. The courts usually explain all this, and many courts also hand the parent a note showing what is the latest date up to which the child may be detained under the order, with a reference to the possibility of earlier licensing as the result of good conduct and satisfactory progress.

Judges as Justices of the Peace

There have been many instances of Judges of all ranks, from lords of appeal to county court Judges, sitting as justices of the peace, often as chairmen of quarter sessions, sometimes as members of the bench in petty sessions. They usually sit in courts for the area in which they have a residence.

It is possibly without precedent for Judges of the High Court to sit as magistrates in the Royal Courts of Justice in London. This happened in the Court of Criminal Appeal in the case of *R.* v. *Sharp, R.* v. *Johnson* (*The Times,* February 16). The Court with regret quashed the conviction of two young men for making an affray, but the Lord Chief Justice said that they were men who had shown themselves to be violent and aggressive, blemishers of the peace. Therefore they would be ordered to find each a surety in the sum of £50 to keep the peace for two years, or in default to be imprisoned for six months. Lord Goddard observed that all Her Majesty's Judges were justices of the peace for every county, and they were doing preventive justice in accordance with the Justices of the Peace Act, 1360 (34 Edw. 3 c. 1).

The learned Judges were not, of course, sitting as a magistrates' court hearing an information or complaint, but acting as justices of the peace under the powers possessed by all justices to require sureties of the peace.

Road Traffic Act, 1956: More Sections to Come Into Force

The Road Traffic Act, 1956 (Commencement No. 4) Order, 1957 [S.I. 1957 No. 185 (C. 3)] was made on February 8, 1957, to bring further provisions of the Act into force as follows:—

On March 1, 1957.

	In s. 4 (6) the words from " and in subs. (7)" to the end of the subsection.
	Section 17:
	In sch. 8, para. 34 (except subpara. (6)).
Ninth schedule as follows:—	
The Road Traffic Act, 1934	Section 1 (5) and (6) and in s. 1 (7) (*b*) the words " under subs. (5) of this section."
The Trunk Roads Act, 1936	In part I of sch. 3, in the entry relating to s. 1 of the Act of 1934, the words " subs. (5) shall not apply."

On April 1, 1957.

Section 42 and sch. 7.

On July 1, 1957.

Sections 4 (2) (8) (9) and (10) Ninth schedule as follows:—	
The Road Traffic Act, 1934	In s. 1 (4) the words " notwithstanding that such a system of lighting as aforesaid is provided thereon " and the words " notwithstanding that such a system of lighting as aforesaid is not provided thereon."

The part of s. 4 (6) brought into force on March 1 amends s. 1 (7) of the 1934 Act so as to require local authorities to erect appropriate signs to show not only whether a road is or is not deemed to be a road in a built-up area but also, if it is deemed to be such a road, what speed limit applies. Section 17 of the 1956 Act introduces amendments about the groups of vehicles covered by driving tests. Para. 34 of sch. 8 is concerned with the powers of the Minister to decide whether a road in a built-up area shall be deemed not to be such a road.

Section 42 authorizes the Minister to make regulations prescribing the types of helmet recommended for motor cyclists as affording protection from injury in case of accident, and introduces penalties for selling or offering for sale as a helmet affording such protection one which is neither of a type prescribed under the section nor of a type authorized by regulations and sold or offered for sale subject to any conditions specified in the authorization. Schedule 7 is concerned with " supplementary provisions in connexion with proceedings for offences under s. 42 " and introduces a procedure similar to that which exists under the Food and Drugs Acts for bringing an " actual offender " before a court where he is not the person who effected the sale or made the offer for sale, and it also provides for a warranty defence.

Section 4 (2) (8) (9) and (10) are concerned with amendments affecting proceedings for breaches of the speed limit in built-up areas.

The Perpetual Learner

Section 18 of the Road Traffic Act, 1956, has not yet been brought into operation. It allows a licensing authority to refuse, in the circumstances set out in that section, to issue a provisional driving licence to a person who has previously held such a licence, has not taken a test, and cannot satisfy the authority that there was any reasonable cause for his not doing so. From time to time we read of cases which seem to make it desirable that this section should be brought into force as soon as possible. The most recent such case is one reported in the *Evening Argus,* Brighton, on February 12. A motorist was driving his car when his attention was attracted by the erratic driving of another motorist. He allowed this other motorist to pass him and then followed him because he feared that there would be an accident. He picked up a policeman and continued to follow the other car with the policeman as a passenger. After a while, on the policeman's instructions, he passed the car and the policeman got out and gave a clear signal to the driver of the other car to stop, but the driver swerved round him and kept going. On a later occasion when the other car was held up the policeman ran alongside it and banged on the windows and flashed his torch into the car. Again the driver did not stop. In the course of the journey this other car was swaying about the road at about 45 miles per hour.

The driver was later traced and he was fined £20, and disqualified, for dangerous driving, £5 for failing to stop on a policeman's signal, £2 for excessive speed, and £1 for driving without supervision or " L " plates. He admitted that he had been driving on and off for seven years but had never passed a test. He was carrying two passengers on this occasion. He said that he was waiting to take his test but that it had been postponed because of petrol rationing. He had two previous convictions for motoring offences and, in 1950, was disqualified for 12 months for an insurance offence. Such a driver should clearly never be allowed on the

road without a competent supervisor until he has passed a test, and should not be allowed to obtain a series of provisional licences as he appears to have been able to do in the past. Nothing is mentioned in the report about this driver having taken a test during the course of his seven years driving; all that is recorded is that he said that he had never passed a test. It may be that s. 18, *supra*, could with advantage be strengthened to deal with the case of the person who seems incapable, in spite of repeated attempts, of passing a test.

Traffic Signs

On March 1, 1957, the existing Traffic Signs (Size, Colour and Type) Regulations, 1950, are revoked and replaced by the Traffic Signs Regulations and General Directions, 1957. On that same date, as we noted at 121 J.P.N. 63, s. 35 of the Road Traffic Act, 1956, comes into force. By s. 35 (7) the words "being a sign for regulating the movement of traffic and being" in s. 49 of the 1930 Act are to cease to have effect, but it is provided that, for the purposes of s. 49, a traffic sign shall not be treated as having been lawfully placed unless either

(*a*) the indication given by the sign is an indication of a statutory prohibition, restriction or requirement,

(*b*) the sign has been placed in the exercise of the powers conferred by s. 38 of the 1936 Act (which authorizes certain temporary signs for dealing with traffic congestion and danger), or

(*c*) it is expressly provided by the regulations under s. 48 of the Act of 1930 prescribing the type of sign in question, or the authorization under that section authorizing the erection or retention of the particular sign, that s. 49 aforesaid shall apply to signs of that type or, as the case may be, that particular sign.

The new Regulations are made under ss. 48 and 59 of the 1930 Act and so far as (*c*) above is concerned reg. 5 provides that s. 49 shall apply to the signs of the types shown in diagrams in sch. 1, the numbers of which are set out in reg. 5 and to the red signal shown by traffic lights as prescribed by reg. 27 (including those under that regulation as varied by reg. 28) or by reg. 29. The diagrams referred to are halt and slow signs, keep left (dual carriageway), turn left (dual carriageway), keep left, stop for weight check and stop.

In reg. 2 (2) there is a saving clause for existing signs which comply with the 1950 Regulations, but this is subject to provisos which are too lengthy to reproduce here.

Regulations 21 and 22 and sch. 2 prescribe in greater detail the size, colour and type of signs consisting of lines or marks which may be placed on the carriageway of a road.

Part II of the Regulations re-enact, with amendments, the Traffic Signs (General) Directions 1950, which are thereby revoked.

It is worth while again to call attention to the fact that s. 35 (8) of the 1956 Act does away with the power of a court to impose imprisonment for a second or subsequent conviction under s. 49 of the 1930 Act by enacting that the appropriate part of s. 113 (2) of the 1930 Act shall not apply to convictions under s. 49. This means that on a first such conviction a fine not exceeding £20 may be imposed and on a subsequent conviction one not exceeding £50.

May we also remind our readers that on April 1, 1957, s. 36 and sch. 5 of the 1956 Act come into force, enabling the Commissioner of Police for the Metropolis, with the Minister's consent, to make special regulations under that section for regulating traffic in any manner allowed by sch. 5. Penalties similar to those set out in the preceding paragraph are, by s. 36 (4) prescribed for failure to comply with any such regulations.

The Traffic Signs Regulations (S.I. 1957) No. 13 dealt with in this note are quite voluminous, and they can be obtained from H.M. Stationery Office at a cost of 5*s*. net.

A Licensed Tenant

The Landlord and Tenant Act, 1954, gave security of tenure, broadly speaking, to the tenants of business premises. Section 43 contains exceptions: one of these is "a tenancy of premises licensed for the sale of intoxicating liquor for consumption on the premises"—subject, again, to exceptions not here relevant. The reason for this provision, which is subs. (1) (*d*) of s. 43 of the Act of 1954, was no doubt that the owners of licensed premises of the ordinary kind are responsible for the conduct of the business, and would be in an impossible position if they found it necessary to make a change, and one of their tenants was entitled to continue in occupation, in the same way as the tenant of an ordinary shop, under the main provisions of the Act. The possible hardship to a good tenant, who might perhaps be got rid of for a bad reason, has not been allowed to outweigh the general public advantage of placing the owners of licensed premises in control of their chosen tenants. What then are the licensed premises to which the provision applies?

Section 151 of the Customs and Excise Act, 1952, provides for the grant of occasional licences, to the holders of retailers' on-licences who have obtained the appropriate consent, which now means consent granted by justices under s. 148 of the Licensing Act, 1953. Subsection (2) of this section requires an applicant to serve notice on the chief officer of police, stating *inter alia* "the place and occasion for which the occasional licence is required," and subs. (4) says that the justices to give the consent shall be those who act for the petty sessions area "in which the place to which the application relates is situated." We have quoted these two subsections, by way of calling attention to the word "place" (not "premises") and introducing subs. (5), which says that various other sections "shall apply to the holder of an occasional licence as they apply to the holder of a justices' licence, and to the place where intoxicating liquor is sold under an occasional licence as they apply to licensed premises of the holder of the occasional licence." The applied provisions deal with gambling and other matters of public order, and the language of subs. (5) seems to make it plain that the obtaining of an occasional licence does not convert the place for which it is granted into "licensed premises." The same result can be reached by an alternative path. The expression "on-licence," used in s. 148 (1) of the Act of 1953 and in s. 151 of the Customs and Excise Act, 1952, is defined for the purposes of both Acts in s. 1 of the Act of 1953, in terms which show that it is granted "for" premises, and s. 165 (2) defines "licensed premises" to be premises for which a licence granted by justices is in force. Since an occasional licence is granted by the Commissioners of Customs and Excise, with the consent of justices, not by the justices themselves, the "place where intoxicating liquor is sold under an occasional licence" is not "licensed premises" within this definition. In the case which brought this problem to our notice, a brewery company had bought an unlicensed restaurant which was within or close to a market. Before they bought

it, the practice had grown up of issuing occasional licences for two days in every week for persons frequenting the market. Whether the regular issuing of occasional licences in this way accords with the spirit of the Licensing Acts is a question we do not propose to deal with. Having acquired the restaurant, the brewery company let it to the tenant of one of their ordinary public houses. Being a person entitled to hold occasional licences by reason of his being already the occupant of ordinary licensed premises, he covenanted in his lease of the unlicensed restaurant to go on applying for occasional licences twice a week, as had formerly been done. The question now arises whether the brewery company can get rid of their tenant. Section 43 (1) (*d*) of the Landlord and Tenant Act, 1954, enables them to get him out of the public house, but they cannot get him out of the restaurant unless this is licensed premises. Unless (that is to say) the exception in subs. (1) (*d*) applies, he will (although no longer able to sell intoxicating liquor) be able to remain as tenant of the restaurant and carry on ordinary business there, whilst preventing any other licensee employed by his landlords from obtaining an occasional licence. In the particular case, it may be that they will have a remedy by reason of breach of covenant: he has bound himself to go on applying for occasional licences, and if he ceases to be licensee of any ordinary licensed premises he will be unable to do so. Whether or not he can be required on that ground to give up the restaurant, the marriage of s. 42 of the Act of 1954 with the Licensing Act, 1953, seems not quite happy.

Housing

The seventh annual Return of Housing Statistics published by the Institute of Municipal Treasurers and Accountants is of great interest: it gives a broad picture of the finances of the greater number of the housing authorities of England and Wales, including the London county council and all the county borough councils. A new feature, very worth while, is the information given about rent rebate schemes.

As in so many classes of expenditure, the London county ratepayers bear a heavier burden than the average of the provinces: the rate subsidy in London amounts to 21 *per cent.* of total housing income, in the county boroughs it averages 11 *per cent.*, in non county boroughs and rural districts nine *per cent.*, and in urban districts eight *per cent.* Within each of these classes there are large individual variations: the following examples illustrate this point:—

County Boroughs	*(a) Rents*	*(b) Rate Subsidy*	*(c) Percentage of (b) to (a)*
West Ham	232,000	155,000	67
Gateshead	186,000	95,000	51
Kingston-upon-Hull	555,000	214,000	39
Birmingham	2,719,000	369,000	14
Ipswich	369,000	46,000	12
Cardiff	767,000	76,000	10
Blackpool	186,000	6,000	3

These differences are repeated in the other classes of authorities.

Numerous factors determine the subsidy demanded from ratepayers: they include variations in the cost of house building as between one authority and another, in the cost of financing capital works, in the cost of repairs and maintenance (here again the London county council at £19 per dwelling spent almost twice the average of all other authorities), and, importantly, in the level of rents. The rent rebate schemes in operation vary considerably, for instance while in some cases aggregate maximum rents are calculated to cover total annual outgoings, in others subsidies are deducted from annual outgoings before calculating what is required from rents. Again, in the apportionment of aggregate maximum rents to individual houses a variety of bases is used, for example, gross annual value, rateable value, size and amenities, annual costs, or pre-rebate scheme rents.

It is clear that the division of liability between tenants and ratepayers is one of the most difficult of the problems confronting council members. The numbers of houses built and owned by local authorities have grown so greatly that in many towns tenants and their families amount to a quarter or more of the total population. Nevertheless, it seems to us that only after the most careful consideration and full demonstration of the impossibility of any other course should subsidization of a section of the community by the remainder go beyond the statutory requirements.

Better Mental Health Treatment

The need for improvements in mental hospitals is generally recognized and the Ministry of Health have shown their anxiety to make conditions better. This is one of the first priorities in the capital expenditure programme. Even although the reconstruction or replacement of some of the old buildings will not be possible in the near future much can be done and has been done by sensible administration. As Mr. Renis Howell, M.P., said recently after visiting mental hospitals in his constituency (we quote from *The Birmingham Post*): "Any improvements that have been achieved have been entirely due to the efforts of the staff." He was one of five members who visited these hospitals a year ago and has now been again to see what improvements have been made. In view of the public concern often shown in the press and by questions in Parliament it would be well if members generally would obtain first hand information in this way. We are sure such visits would be welcomed by the staff. Surely if matters can be improved by redecorating, for instance, this should be done. But it was reported recently (according to the *East Anglian Daily Times*) that the men's day room at one mental hospital was "the gloomiest room imaginable." There, apparently, decoration is complicated because the Regional Hospital Board insist that it should be done piecemeal instead of on a five-year plan.

Shortage of nurses is still a great problem and in Suffolk a campaign has been launched to interest school-leavers, and to obtain the co-operation of youth employment committees. We are sure, however, that before much progress is made in this direction it will be necessary to satisfy parents, as well as the girls themselves, that at the beginning of their training they are not confronted with some of the worst characteristics of the mental patients. The nursing of mental patients can be even more satisfying than nursing the physically ill. Open days at mental hospitals are one excellent way of educating the public in this matter. Broadcasting is also useful. A recent television series on "The Hurt Mind" must have been a source of education to many as to the great improvements which have been made since lunacy became known as mental illness. This would probably be the first time that many people realized that in some mental hospitals there is now "an open door" but not in as many as we would like. We heard recently of one mental hospital in Scotland where all keys and locks have been discarded and patients are allowed to go into the neighbouring town quite freely. As the Duchess of Kent said in speaking at a Mental Health Exhibition at Reading (again we quote from the *East Anglian Daily Times*) specialists in this field have now made it clear that in a large number of cases mental illness is a disease susceptible of cure like many others; a disease which has a cause, a traceable development and a specialist form of treatment.

Welfare Costs

The report of the Guillebaud Committee on the cost of the National Health Service, published in January, 1956, recommended that the existing Exchequer subsidy towards the cost of providing residential accommodation under s. 21 (1) of the National Assistance Act be abolished and replaced by a new grant of 50 *per cent.* of the net cost incurred in providing and maintaining all residential accommodation. No proposals implementing this recommendation have yet been disclosed and having regard to the government views about grants in general recently made known it is now extremely improbable that they ever will. In the meantime the cost of the Welfare Service continues to increase, albeit slowly. It may be the case, indeed, that failure of the central government to undertake responsibility for a fair share of the cost of the service has unduly retarded progress: the Guillebaud Committee's view was that grant should be increased only on the condition that local authorities were required to develop their services as needs required.

The return of welfare services statistics for 1955–56 published jointly by the Society of County Treasurers and the Institute of Municipal Treasurers and Accountants shows that net rate-borne expenditure had increased by only £¾ million in 12 months to a total of £15½ million, and a considerable part of the increase is, in any case, due simply to higher wages and prices. Although the effect of the present ban on much capital work must not be overlooked we think the relatively high rate cost of the welfare service an important factor and agree with the Guillebaud Committee that an adequate grant must be paid if the service is to be developed as it should.

Apart from this general picture the return contains much of interest regarding the comparative costs of the service both in relation to different classes of authorities and to individual authorities within those classes. London county (always a class by itself) bears considerably the heaviest total burden:

	Net Rate-borne Expenditure per 1,000 Population
	£
London County	529
County Boroughs	395
Counties	301

Within this total the L.C.C. also spends more on each type of service with the one exception of blind persons: in this case the cost of running workshops for the blind pushes up the county borough figures to an average of £66 per 1,000 population as compared with London's £35 and £30 for all other counties.

The costs per resident week of homes provided by the authorities disclose some striking variations which are worthy of further investigation. For example, in homes catering for between 15 and 30 persons why should the staff cost per week be only £1 8*s.* in Bolton but £3 11*s.* in Gloucester? Or compare the two Lancashire towns of Bury and Blackburn: in the former staff costs £1 7*s.* weekly, but in Blackburn the cost is just double that figure. Again, whereas West Sussex spends £1 10*s.* per week East Sussex spends £2 10*s.*: the same differences prevail in the north as in the south, for example the cost in the West Riding of Yorkshire is £2 3*s.* whereas in the North Riding it is £3.

COMPULSORY PURCHASE

LEGAL COSTS AND COMPENSATION FOR DISTURBANCE

By C. W. L. JERVIS

The profession are indebted to Crawley Development Corporation for lodging an appeal from a decision of the Lands Tribunal in connexion with the compulsory acquisition of the freehold dwelling-house "St. Raphaels," Three Bridges Road, Crawley (*The Times*, January 24, 1957). At the time of the acquisition the owner was in occupation of the house as her home. A figure was agreed on the compulsory purchase, but the claimant also claimed to be entitled to the sum of £241 for legal costs, surveyor's fees and other expenses incurred in hunting for and purchasing another house. These sums were claimed under the heading of "compensation for disturbance" under r. 6 of s. 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919. In the Court of Appeal reference was made to the case of *Beard* v. *Porter* [1947] 2 All E.R. 407, which was of much assistance to the claimant's case. *Beard's* case was an action for damages for breach of a contract of sale and purchase of a house, the vendor having failed to give vacant possession of the house in breach of an express term of the contract so to do. The purchaser completed the purchase and, on failing to obtain vacant possession, bought another house in which to live, and claimed as damages the difference in value of the first house with and without vacant possession, plus the amount of the solicitor's costs and stamp duty incurred on the second purchase. *Beard's* case was also heard by the Court of Appeal, who, by a majority, decided that the solicitor's costs and stamp duty were not part of the purchase price of the second house and were, accordingly, recoverable as damages for the breach of contract. In his judgment, Lord Justice Tucker said . . . "these items appear to me to result directly from the vendor's breach of contract. The purchaser had to find somewhere to live. For five weeks he lived in lodgings and is entitled to recover the cost. At the end of this period he moved into the house which he had been compelled to purchase. He must be presumed to have received full value for the money which he paid for its purchase, but the stamp duty and legal costs were not part of the purchase price . . . they were outgoings necessitated by the vendor's breach for which the purchaser has received no countervailing benefit. They are sums which he has paid away and which are not reflected in the value of the house which he purchased."

In the present case Crawley Development Corporation argued that the sums in question were not compensation for disturbance but for reinstatement, and could never be the subject of compensation, and referred to r. 5 of s. 2. This rule deals with compensation on the basis of the cost of reinstatement where there is no general demand or market for the land apart from the compulsory acquisition. The Court of Appeal would not allow this argument to prevail. Everything which was a direct and natural consequence of the compulsory acquisition could be recovered under the head of compensation for disturbance . . . "here the money (the claimant) has spent which is a direct consequence of being turned out of her house is properly the subject of compensation."

Many will agree with Lord Justice Romer when he said the decision in the case was not only right in law but accorded with common sense. Nevertheless, as Lord Justice Denning warned in his judgment, the matter must not go too far. Brokers' charges for converting the compensation into stocks and shares cannot be claimed. Nor can an old lady compulsorily turned out of her home claim to be kept for the rest of her days in a guest house. Lord Justice Sellers indicated that in any given case it was a question of fact whether any particular item of expenditure came within the rule.

It seems probable the case may go to the House of Lords.

OXFORDSHIRE JUSTICES OF THE PEACE IN THE SEVENTEENTH CENTURY

By ERNEST W. PETTIFER, M.A.

(*Continued from p.* 82, *ante*)

The state of the prisoners in the Castle Prison at Oxford was certainly no better than in other prisons of the seventeenth century. It is equally probable that it was no worse for the sufficient reason that the wretched state of the premises and the prisoners, as in many other prisons, had reached the lowest point in degradation, cruelty and neglect. During the last years of the century a man named Thorpe was the keeper of the prison. There is no specific mention of Thorpe in the various petitions sent to the justices by prisoners, although, as the appointed keeper, he was primarily responsible for the many abuses in the prison, but a letter from Thomas Hill, dated November 6, 1690, gives his frank opinion of Thorpe's wife—" Mistress Thorpe, the Prison-keeper," he said, " a man had better be subject to slavery than to this woman, for she is the Devil."

Hill, in his letter to the justices, said that the prisoners were confined in the tower, without beds or straw to lie upon, for 17 hours of the 24. An earlier petition (October, 1687) put in by all the prisoners stated that they were very poor and very many in number whereby they were forced to undergo great want and suffer great calamities. Another petition of April, 1688, was in similar terms—" The petition of poor convicts and other distressed Prisoners humbly showeth that they are many in number and Miserable poore and have suffred Longe hardship and tedious Imprisonment to thare great Affliction being Like to Continue in want, except the Honrble Bench be pleased to shoe mercy." The justices referred the complaint to two of their number, with a direction that they should go and view the prison. The references in these petitions to the " many in number " in the prison show that the inadequate bread ration was not varied whether the prisoners were few or many. As a result of one petition, received by the court on January 30, 1687, the justices ordered a special payment of 4*s.* per week in respect of three named prisoners, but, as the payment was to be made to Mrs. Elizabeth Thorpe, it is extremely probable that the prisoners did not greatly benefit from it.

A married woman named Mildred West petitioned the Michaelmas Sessions of 1688 to be brought to trial upon a charge brought against her falsely, she said, by her son and his wife. She had been beaten by her son, and had had him bound over to appear at sessions upon that charge, and, it seemed, the son had retaliated by taking her before a justice and obtaining her committal upon suspicion of breaking into a house and stealing goods. Her petition was successful, for she was brought before the court in the following month and discharged.

The calendars of prisoners in the gaol awaiting trial at sessions are of interest if only because they give some information as to the types of cases tried by the justices. In April, 1687, there were four cases of burglary in the calendar, one of the accused also being indicted for an attack on the occupier of the house entered and " desperately wounding him in twenty several places." A charge of treason, a suspected murder of a bastard child, a theft of linen, and an unpaid fine of 10 marks made up a total of nine prisoners. One man, William White, was awaiting a sentence or transportation. His name appeared in later calendars, and evidently he waited a long time to know his fate. On May 17, 1687, a month later, eight of these prisoners were still on the calendar, and there had been two additions, two men for attempting to break into premises and steal a horse and cart, and a woman charged with picking pockets.

A calendar some months later (October 4, 1688), showed that four of the prisoners awaiting reprieves and transportation had been reprieved. They were ordered to remain in the gaol pending arrangements for their removal to a seaport for transportation. Two of the remaining prisoners faced charges of horse-stealing, another man had admitted stealing linen, a woman was awaiting trial for wounding another woman, a woman found guilty of seditious words was ordered to remain " until discharged in due course of law," and a re-fractory servant of the household of Sir John Doyley was ordered, according to a note made on the calendar by the clerk of the peace, to pay 3*s.*, to his master, a fine of 6*s.* 8*d.* and ordered to be removed to the house of correction.

By January 30, 1688, most of the above-mentioned prisoners had disappeared, and had been replaced by two alleged murderers (both committed by coroners), a house-breaker, a horse-thief, and an ordinary thief. The unhappy William White had, heard, at last, that he was reprieved (upon a charge of stealing a horse) and that he was to be transported.

Houses of correction, or " Houses of Work," were in existence before 1611 when the provision of them was made compulsory by Act of Parliament, but the House of Correction at Witney was probably established after 1611. The only information as to who was in charge of this establishment is given in an indictment (Easter Sessions of 1688) of Thomas Collier, a clothier, and Henry Dutton, a weaver, both of Witney, described as " keeper of the Gaol or Bridewell in the County," a description which seems to apply to Dutton. Both men were indicted for an assault on a woman inmate of the House of Correction, and each was fined 3*s.* 4*d.* It is possible that Collier was actually co-keeper, for in 1710, a man named Francis Collier (possibly his son) was " Keeper of Witney Bridewell " at a salary of £4 per year.

The one calendar of prisoners in this house (January, 1687) gives the names of two women only, although it is likely that there were other inmates, for local justices sometimes committed offenders direct to the House of Correction. The two women, Elizabeth Justice and Susanna Munday, were both detained in respect of illegitimate children, Susanna Munday, it was added, having refused to disclose the name of the father to the justices at the sessions. Her case was a very unusual one; the editor

describes it as the most dramatic story in the Oxfordshire documents. In brief, Susanna declared, in her deposition before a justice, that the child Mary was the daughter of an undergraduate to whom Susanna had for some time past believed that she was married. In her deposition she averred that she was married to one Thomas Smith about eight years before at the Six Bells alehouse outside North Gate in Oxford between 8 and 9 in the morning; she was married by a gentleman but did not know whether he was a minister or not, " but he did weare a gown and marryed them with a bible and a ring; she knows not his name nor of which Colledge; but he with two or three more Gentlemen were then brought thither by the said Thomas Smith and were present at their marriage." She did not know any of them, but they were all scholars. Thomas Smith, she was told, was also a scholar, but she did not know of which college. She was a servant at the Six Bells for 18 months, and Smith used to visit her there, but, she thought, the people at the alehouse did not know they were married.

The girl continued that she had seen Smith at her father's house in Burford " about half a year agoe " and that he stayed with her there for a week, and that he then said that he was shortly going to France to wait upon a young gentleman. At that time he left £10 for her with her master, Walter Collier of Witney, and that she had received other payments in the same way. She never knew where Smith's home was but thought it was in Derby.

The justices in session evidently disbelieved her story, or, possibly, the allegation that Smith was the father of her child. The weak point in the story was, of course, her statement that Smith's last visit was only six months earlier. The statement would be made while she was in fear and distress and she may have omitted some essential parts of her story. She was positive that the child had been born as a result of Smith's visit to her at her father's house, and she added that, after that week, they stayed two or three days " at Mother Wright's at Boteley." Had it been possible to get the man before the court she would, in all likelihood have had a good case against him, apart from his payment of money, but she was charged only with failing to disclose the name of the father, and the justices did not believe her statement as to who was the father of her child.

At the end of the deposition the clerk of the peace added a note that the justices had ordered that she should be discharged if she disclosed the name, and entered into a recognizance to appear at the ensuing sessions. There is nothing in the record to tell us of her ultimate fate, nor whether " Thomas Smith " (it seems unlikely that that was his real name) came to her aid on his return from his journey abroad.

As it was to the justices, either at their own homes or in sessions, that the impoverished came for help, it is not surprising that there are many references to the real poverty in which many of the country folk lived, particularly the aged. A petition of the overseers of the parish of St. Harcourt gave a graphic account of the state of their own parish. The petition was primarily to bring to the notice of the justices the unlawful taking-in by two of the inhabitants of two elderly people who had become chargeable, but the complaint was backed by a depressing picture of the general position in the parish. " The said parish," so ran the petition, " is already exceedingly surcharged with poore people, as haveing in Stanton and Sutton (being but part of the parish above) 40 families consisting of about 150 persons, men women and children, which for the most part are all relieved by the almes of the said parish." While the justices made an order for the removal of the two interlopers to their place of settlement, they could do nothing to relieve the situation in this afflicted parish. The problem was one for the overseers to solve, and as they were, in general, farmers and principal ratepayers themselves, it can be understood why the unfortunate holders of the office seized the opportunity to bring their difficulties to the notice of the justices.

Another petition from the parish of Standlake (addressed to the Judges of Assize at Oxford, and not to the sessions) emphasized the fact that there was much over-crowding in many parishes, owing to residents taking in whole families as lodgers, and this petition pointed out that, in addition to the strain on the poor rates, much damage was committed by the invaders— " The said freeholders, coppieholders and leaseholders can hardly keep any powltry or other provision for themselves about them, nor corne in their feildes after it is cutt, nor any dead hedges standing, but that they shall be taken away at night. And oftentymes their quick mounds and other trees as Ashes, Willowes etc. are pulled up or cutt up by the ground to the great hurt and damage of the owners thereof who planted the same to their owne use and the publique good."

Churchwardens and overseers of the seventeenth century had a thankless task altogether. If they sought to abate the evil of over-crowding they were frequently called to quarter sessions to meet an application by a homeless labourer for a house. Joseph Stevens of Sonning, for instance applied at Michaelmas Sessions, 1687, that the churchwardens and overseers of his parish should be ordered to provide him with a house " for his money," he having been born in the parish, or that he should be given permission to erect a house on the waste " without laying thereto four acres of land." In spite of the fact that the applicant had some money, according to his own statement, the justices ordered the churchwardens and overseers to provide him with a house, or find him a shilling a week from the rates. On the same day Benjamin Willnott of Upper Hayford obtained a similar order. There are many other such applications scattered through the Oxfordshire and other county records.

In addition to the claims by the houseless members of the village communities the churchwardens and overseers had to meet claims by the injured and the aged. A man blew off his thumb when using a gun, and lost the use of his hand (whether the accident was associated with a poaching expedition he did not state): the surgeon had charged him £10 which he could not pay, and, he added " The humble desire of your Petitioner is that you would be pleased to grant him an order that the Churchwardens and Overseers of Nuffield " (a parish now figuring in the peerage list!), " may pay for the cure." In this case the justices delegated the duty of inquiring into the claim to three of their number. Faced with many claims upon the slender resources of the parish, churchwardens and overseers not infrequently obstinately refused to do anything, and defied the sessions. An old soldier of 80 years, and his wife over 70, complained that they could get no help; a venerable couple each 80 years old, the wife " a helpless cripple " with an order for 18*d.* a week, could get nothing from the churchwardens and overseers, they said: those who were nearing the end of life and unable to work must have suffered greatly under the primitive poor law system.

A licence to travel, issued by Mr. Thomas Barrett of Tenby in April, 1624, has been preserved amongst the Oxfordshire papers. From the wording of the document it is reasonable to conjecture that Mr. Barrett knew the three girls to whom he granted it, Malyn, Ales (Alice) and Adrey (Audrey) Ebsworth, whose father had died at Tenby. It is a long journey from Tenby to Standlake, the native place of the family, but the three young travellers survived the perils of the roads, and the pass was ultimately handed to the clerk of the peace for filing.

Memories of the great fire at Eynsham on Whit Monday, May 25, 1629, are still preserved by several documents in the archives of the county. Twelve homes with barns, stables and

outbuildings, went up in flames between 8 and 12 that morning, and the total loss amounted to £966 13*s.* 4*d.* The justices acted promptly, in view of the magnitude of the disaster, and their certificate, signed by nine justices, to Lord Coventry, Keeper of the Great Seal, was sent off on June 2, 1629, asking for His Majesty's letters patent for a collection to be made. Lord Coventry's cautious reply was endorsed on the certificate, asking for further particulars as to the financial position of the sufferers from the fire, and what interest they had in the houses destroyed, "for," he said, "I do not mean that rich men's losses shall be made good out of a common purse!"

(*To be concluded*)

"THE POOR, UNSIGHTLY, NOISOME THINGS"

From time to time we have been asked about the power, or conceivably the duty, of a local authority whose area is bounded by the sea to remove the carcase of some creature which has been washed up by a storm or by the tide, and has not been removed by the retreating water. It is one of those problems to which one is tempted to think there ought to be a straightforward answer, or perhaps different answers for different cases, but with the cases distinguished by some physical circumstance. One could say logically that there might be different answers according as the carcase lay on the foreshore proper or above; it hardly seems sensible that the answer should depend upon the creature's diet during life, but so it does. This result springs from Parliament's having overlooked the nuisance to human beings and possible risk to human health, which may be caused by a carcase when it is nobody's certain business to get rid of it, and having fixed its eyes upon possible infection of farm animals. To protect such animals it has enabled the receiver of wreck, who is an officer of the Crown, to recover from local authorities the cost of getting rid of carcases of those animals which are known to be likely to spread certain diseases afflicting the sort of animals kept for human food. There is a statutory list of animals, and power to add others, but the power is limited, and some of the animals whose carcases present most difficulty are left outside the Act—so that the receiver of wreck is not concerned. It is arguable who else may be concerned, and we thought at one stage that it was arguable also whether the statutory list was exhaustive—see what follows on both points. The present law is to be found, primarily, in the Diseases of Animals Act, 1950, which was a consolidating Act, following a string of earlier provisions. The power in s. 75 (1) of the Act of 1950 is to deal with a carcase; this word is defined in s. 84 as the carcase of an animal, and the word "animal" is given a limited meaning. If therefore the two definitions in s. 84 (1) apply to s. 75 (1), the power of this subsection extends only to the carcase of a ruminating animal or pig, subject to any extension by the Minister.

The powers of this subsection, and of subs. (2) which is not here relevant, are the same as were given by s. 46 (1) and (2) of the Diseases of Animals Act, 1894. At 120 J.P.N. 112 we took the view that subs. (1) applied to a dead dog, considering that in s. 46 (1) of the former Act and s. 75 (1) of the new Act the context could fairly be held to exclude the limiting definition of the word carcase in s. 84. A correspondent has questioned our opinion, and, now that a doubt has been raised, we have pursued s. 46 of the Act of 1894 to its origin. (The Act of 1894 was, like that of 1950, a consolidating Act). Subsection (1) was originally s. 53 of the Diseases of Animals Act, 1878, and subs (2) was s. 11 of an amending Act of 1886. The Act of 1878 contained the same definitions of "animal" and "carcase" as the two consolidating Acts, but with the distinction that in the Act of 1878 the modern saving for the context did not appear. It seems, therefore, that in the Act of 1878 the word carcase must have meant the carcase of a ruminant or pig and nothing else. If so, it is at least uncertain whether the meaning can be wider in the consolidating Acts of 1894 and 1950. It is this uncertainty which throws doubt upon our former answer about the dog, and suggests that the whales and porpoises in which our recent correspondent is interested (mammals though they be, and animals in any ordinary sense) are not, when dead, carcases within the meaning of s. 75 of the Act of 1950. In support of this disappointing conclusion it can also be said (as we remarked above, although this could not modify the meaning of the words if plainly applicable) that the purpose of these Acts from 1878 and earlier up to 1950 has not been to prevent nuisance or to safeguard public health: it has been to deal with the named diseases of cattle which (we suppose) can be spread by the carcase of a creature susceptible to those diseases, but not by the carcase of a carnivorous quadruped or a marine animal. Here and there, also, the Acts have expressly mentioned horses as well as the defined animals, and have spoken of an animal whether or not an animal as defined: there is no such qualification in s. 75 of the Act of 1950. Horses, by the way, with asses, mules, and jennets, have been brought into the section by order of the Minister of Agriculture and Fisheries (S.I. 1952. No. 1236), but dogs and other carnivorous animals have not, and the Minister's extended power is limited to quadrupeds, so that marine creatures are beyond its scope. The result may be unfortunate. The receiver of wreck is not likely to be instructed to dispose of carcases if the expense will fall upon national funds. Unless the local authority have agreed with him in advance, a dead animal might become highly objectionable while liability was being argued. We use this euphamism in order to avoid calling it a "nuisance," which might seem to beg the next question.

It has been suggested to us that the piece of land on which the whale or other dead animal is lying could itself be regarded as "premises in such a state as to be prejudicial to health or a nuisance," so as to fall within s. 92 of the Public Health Act, 1936, but this again seems not to provide all that is really needed by way of remedy. There is special difficulty if the animal is on the foreshore properly so called. Whilst a dog or other small animal stranded on the foreshore might often float off (perhaps with encouragement by a man with a pitchfork), and disappear at sea when the tide came in, there have been instances where whales have lain for a long time below high water mark, because when the tide came in the water was still not deep enough to float them. In such cases, the carcase is usually upon Crown land and in absence of an agreement under s. 341 (which is most unlikely to exist) ss. 92 and 93 cannot be applied. Even supposing that a storm or an unusual tide has flung a whale or porpoise on to the shore above high water mark of ordinary tides, under which heading in s. 92 (1) of the Public Health Act, 1936, shall the local authority proceed? *Lumley's* note on heading (*a*) seems to suggest that the land itself is not "in such a state" as to be a nuisance. Is the carcase, then, an accumulation

or a deposit so as to fall under heading (*c*)? If it is a deposit, it has been deposited by purely natural causes. Does this differentiate the case from *Margate Pier Proprietors* v. *Margate Corporation* (1869) 33 J.P. 437? In that case the company had constructed an artificial work, the harbour, in which seaweed accumulated. There was strong evidence of public nuisance, from decaying seaweed and possibly from filth falling or draining into the harbour, and the company were held bound to abate the nuisance. The basis of the decision was liability at common law, and it is hard to be sure, from the reports, how far the court was influenced by the fact that the offensive accumulation and deposit (it was obviously both) came there by the company's own action in constructing an artificial work in the nature of a trap. It would be strange to say, in terms of s. 93, that when a whale is cast up by a storm above high water mark the nuisance "continues" by the landowner's or occupier's "sufferance," unless it had been first shown that he was under a duty to remove the object. It is true that in the *Margate* case Lush, J., suggested during the argument that there was an analogy between seaweed in the harbour and a human corpse on land, so that *R.* v. *Stewart* (1840) 12 Ad. and E. 773 might apply, but this is surely far fetched, and the analogy is not mentioned in the judgment. The Court held very briefly that the harbour company were under a duty to abate the nuisance, "whether the seaweed was brought by the sea or came from any other quarter, if it is an accumulation which endangers the public health." But the Court did not make it wholly clear how the duty arose. Despite a suggestion by Hayes, J., during the argument, that there would have been a common law duty to remove a dead horse washed into the harbour, we do not feel certain that the decision would be followed where a purely fortuitous and natural "deposit" like a whale or a dead dog (or a dead horse) lay upon the shore, and the landowner had not contributed to its presence by any artificial works.

Perhaps, however, consideration of ss. 92 and 93, and particularly of proviso (*b*) to s. 93, does indicate the practical way out, even if s. 93 cannot be complied with because there is nobody on whom to serve the notice. We think it most unlikely that the district auditor would disallow expenditure by the local authority in removing a carcase. If he felt obliged to question its legality, on the ground that the statutes have not provided expressly for the case, we think it is the sort of circumstance in which application for sanction could appropriately be made during the audit. Section 307 of the Act of 1936 does not enable the county council to contribute to the local authority's expenditure, but a county council might consider it desirable to contribute where the expenditure was large, and to apply for sanction under the proviso to s. 228 of the Local Government Act, 1933, if the circumstances were such that they would have been liable under s. 59 of the Act of 1950, if the dead animal had learnt to chew the cud.

MISCELLANEOUS INFORMATION

NORTHAMPTONSHIRE PROBATION REPORT

An interesting feature in the annual report of Mr. G. F. Lampard, senior probation officer for Northamptonshire combined probation area is a table showing the actual case loads of each officer compared with what is considered that each case load ought to be. According to this each man officer has too heavy a case load, while one woman officer has rather too many and the other rather too few. Mr. Lampard feels that if the work continues to increase it will be necessary for another male officer to be appointed. This will no doubt be considered by the probation committee. The total turn over of cases during the year under review increased by 37, and the number of reports prepared for various courts increased by 70. At the end of the year there were 22 women and girls over 17 years on probation compared with 19 last year. The number of supervision orders for girls (orders in respect of girls brought to court under care or protection proceedings) fell from 13 to three.

It is clear from the reports of most probation officers' that they attach value to meetings with magistrates on case committees. They feel that they make useful contacts and often receive helpful advice. Some case committees meet much more often than others, and Mr. Lampard has something to say about the intervals between meetings. He also suggests that by this means probation officers come under the notice of magistrates in such a way as to enable the magistrates' to judge their capacity and their work. He writes:

"All case committees are now held at such times as makes it possible for probation officers to give their reports and committees to hear them without undue haste. No longer anywhere are we sandwiched between the end of a lengthy hearing and the beginning of a late lunch. For this we are very grateful.

"As regards the interval between the meetings of case committees that is still six months in most cases. Only Kettering and sometimes Wellingborough meet every three months. . . . It is of course a matter for committees themselves to decide how often they shall meet and not the probation officers. To us the frequency of meetings need not depend only on the number of cases on probation from a given court. To us case committee discussions are, as much as anything, an opportunity of contact with magistrates which is rather less formal than that possible in a court room. The value of this less formal contact seems to lie principally in providing, through the discussion of cases a good opportunity for assessing the strengths and weaknesses of the probation system in regard to various kinds of problem and, more especially for magistrates perhaps, an opportunity of assessing the strength and weakness of any particular officer either generally or in regard to particular kinds of problem. The human interest of the cases discussed may be of less importance than the making and revising of these assessments. The question is whether, in the absence of any other contact between magistrates and probation officers, apart from that in the court room, two contacts per year, as it is in most courts, are sufficient for the purposes to be served."

These suggestions seem well worth the consideration of probation committees.

LOANS SANCTIONED—NINE MONTHS TO DECEMBER 31, 1956.

Figures published recently by the Ministry of Housing and Local Government show that the reduction in total loans sanctioned disclosed by the figures of the six months to September 30 has continued into the third quarter of the financial year.

Purpose	*Quarter Ended*	
	December 31, 1955	*December* 31, 1956
	£m	£m
Housing (Land, dwellings, roads, sewers, etc.)	59	59
Advances and Grants under Housing and S.D.A. Acts	31	23
Sewerage, sewerage disposal and water supplies	17	10
Education	15	18
Miscellaneous	13	9
Total	135	119

The total reduction for the nine months now amounts to £43 m., of which £14 m. relates to housing. The reduction is equal to 11 *per cent.* of loans sanctioned in the corresponding period of the previous year. The education service alone records an increase each quarter and thus reflects declared government policy.

The smaller miscellaneous services have continued their decline and have been joined in the December quarter by police, housing, and highways:—

Service	*Quarter Ended*			
	December 31, 1955	*December* 31, 1956	*Total for* 9 *months*	*Reduction for* 9 *months*
	£	£	£	£
Children	129,000	40,000	565,000	377,000
Fire	346,000	114,000	811,000	737,000
Police (Housing) ..	886,000	478,000	2,535,000	449,000
Police (Other) ..	624,000	110,000	606,000	385,000
Highways	1,721,000	1,383,000	5,535,000	214,000

THE MEDICAL CARE OF EPILEPTICS

A report on the medical care of epileptics has been made by a sub-committee of the Standing Medical Advisory Committee to the Minister of Health and was published recently with the endorsement of the Central Health Services Council. The report states that a good many patients tend to look on epileptic fits with indifference, to accept them resignedly as inevitable and not to realize that they might be controlled by medical care. It also not infrequently happens that patients neglect to take drugs which have been prescribed for them, or fail to visit their doctors regularly and thereby obtain the continuous medical supervision which is essential for the successful control of epilepsy. It is suggested, therefore, that it is necessary for a more intensive effort to be made to inform sufferers from epilepsy of the nature and significance of their disability and to encourage them to secure treatment and then to follow the medical advice they are given. The Ministry of Health have asked local authorities to consider in what ways their domiciliary visitors can help in this respect, in co-operation with the patient's general practitioner and the hospital service, by encouraging patients to seek and to follow medical advice.

The committee make special recommendations as to the nature of the hospital services which should be available including diagnostic clinics, treatment centres, longer-stay centres, and investigatory units. It is suggested that the units of the first two types should be provided on the scale of one for each million of the population; for the third type one for each two million of the population; and for the fourth type three or four for the whole country. The committee hope that local authorities will expand those domiciliary services under the National Health Service and National Assistance Acts which are of benefit to epileptics.

PEWSEY RURAL DISTRICT FINANCES, 1955–56

Mr. E. H. M. Sargent, LL.B., D.P.A., clerk of the council, contributes a foreword to the general information relating to members and committees which precedes the statement of accounts, prepared by Mr. I. W. Janes, A.C.C.S., chief financial officer.

As is natural both officers devote a considerable part of their reviews to comments on housing: the council owned at March 31 last 938 dwellings which was almost a quarter of the total number of domestic properties in the area. Mr. Janes points out that the surplus on the housing revenue account had dropped steadily over a period of 10 years to 1955–56: in that year it was only by resorting to a bank overdraft together with short term temporary borrowings that it was possible to avoid the account being overdrawn. This position plus the changed financial situation caused by reduced subsidies and increased interest rates made it imperative to review housing rents. Mr. Sargent states that the council decided against levying a general increase on all rents and ultimately a rent rebate scheme was evolved and put into operation. It is gratifying that he is able to record that the scheme has been fairly well accepted, the new standard rents being paid without much demur. The scheme will obviate the necessity to pay any rate fund subsidy into the Housing Revenue Account in 1956–57 and will allow a larger contribution to be made to the Housing Repairs Account.

A lesson has been learned in Pewsey, as in many other authorities, from the severe weather of the last winter: adequate frost proofing of water systems is now included in all new buildings and steps are being taken to protect existing houses.

Pewsey raised a rate of 19*s.* a drop of 6*d.* as compared with the previous year, the resulting excess of expenditure over income being met from balances in hand, in accordance with council policy. The balance at March 31 still amounted, however, to £30,000 equal to a rate of 5*s.* 2*d.*

Eighty-one *per cent.* of the rate income went to Wiltshire county council.

Considerable expenditure is being incurred on sewerage and sewage disposal works towards which Wiltshire contributes. Mr. Sargent mentions the need for further works, particularly in the Avon Valley where he says that the need for an adequate water supply and for the disposal of drainage is becoming acute: wells are polluted and the state of the river Avon gives the river board much anxiety. A scheme is in preparation.

Members do not receive much by way of reimbursement of their expenses: the total paid during the year was only £47 and the chairman of the council receives a nominal allowance of £10 10*s.* only.

THE NATIONAL COUNCIL OF SOCIAL SERVICE

The National Council of Social Service was established at the end of the first world war to serve as a national centre for social welfare in the United Kingdom; not merely to deal with a few sharply defined social problems, but to promote co-operation over the whole field of voluntary social service. The 37th annual report which was presented to the recent annual meeting shows how the original aims are being achieved.

Area and local councils of social service represent one of the council's major interests. There are now nine area councils and 155 local councils. Councils of social service continue in their areas to co-ordinate the work of voluntary agencies and to relate it to the policy and purposes of central government departments and the local authorities. The National Federation of Community Associations has 310 members and provides services for 1,602 developing neighbour organizations. The National Association of Women's Clubs includes 564 clubs with a total membership of 19,000. Work for social work in the countryside has always been an outstanding activity of the council. This is carried on with the assistance of community councils in 45 counties in England and Wales. They provide the secretariat to county branches of national bodies such as the National Playing Fields Association, the Council for the Preservation of Rural England and the National Association of Parish Councils, and are directly responsible for services to village halls and to those engaged in rural industries.

Reference is made in the report to the work of the citizens advice bureaux. Although the number of bureaux is smaller, 443 compared with 457 last year, the new bureaux now being opened are on a firmer foundation than many of those established in war-time and no bureau is opened without some scheme of training for its workers. The average number of inquiries per bureau is 2,500 a year. Much interest has been shown and progress made in rural areas and in new communities. As a result of contacts with leaders of the C.A.B. movement in this country, bureaux are being established overseas including Bombay, Netherlands and Israel. An account is also given of the work done through the Standing Conference of National Voluntary Youth Organizations; the Women's Group on Public Welfare and the National Old People's Welfare Council.

It was explained at the annual meeting by the chairman (Sir John Wolfenden) that during the past year the council devoted a great deal of attention to pressing forward with representations to the government and central authorities on important questions affecting the finance and status of voluntary organizations; and was mainly responsible in persuading parliament to bring into law the special provisions for the rating of charitable and other welfare agencies under s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955. A survey of the position is being undertaken to discover the trend of decisions by local authorities and what special difficulties and anomalies are arising. On the financial position not only of the council but of voluntary bodies generally, it was stressed by the chairman that with few exceptions they carry on under conditions which are crippling to good work. Owing to rising costs their income must be increased considerably merely to maintain their work and many of them cannot do this. He suggested that the community must recognize that the voluntary movement as a whole needs greater financial support if the quality of social life is to be maintained. There is need for more trained leaders and the facilities for training need to be improved very considerably.

Livelihood and living.

After the main business of the annual meeting there was a discussion on the role of social work in the integration of livelihood and living which was opened by Mr. John Marsh, director of the Industrial Welfare Society. He spoke of the Duke of Edinburgh's Commonwealth Conference on the Human Problems of Industrial Communities of which he was the hon. administrator and referred to the great value of 280 leaders from nine Commonwealth countries and 20 colonial territories then living together and exchanging views on this important subject. On the matter of small and large business enterprizes he said 41 *per cent.* of the industrial population work in small firms employing less than 100 people. They like it because they have

proximity to the man that matters. On family life he spoke of the value of television if there was a strength of will to control it. He asked whether the great voluntary organizations and the churches are pressing for adequate participation in reaching people by this new medium, and suggested that many of our social problems should be discussed more on the radio. He said those responsible for social welfare and industrial welfare must re-think their purposes; must cut out dead wood; must give younger people responsibility. As to the social work being done in industry he said 15,000 personnel officers have come into being since 1920; then there were only 100. He urged that there should be closer co-operation between them and those engaged in the voluntary sphere.

Other speakers were Mr. Harry Briggs, labour adviser to the board of Unilever Ltd; Miss B. N. Seear, lecturer in social science, London School of Economics; and Dr. John Spencer, director of the Bristol Social Project, University of Bristol. Mr. Briggs said that the manager in industry sees the social worker as a person who clears up troubles—not as a dynamic force. He agreed with Mr. Marsh that there was need for greater co-operation between personnel managers, who are responsible for much social work, and social welfare workers employed by voluntary organizations and public authorities. Miss Seear dealt with the problem of married women in industry. She said that one third of the women of working age were in employment outside the home; fifty years ago the proportion was about the same. But the proportion of married women in industry is greater. This is made more possible through families being smaller and the increase of childless marriages. The proportion of one child marriages has increased five times; that of two children marriages four times in the last 50 years. Then 16 *per cent.* of marriages had 10 children; now one *per cent.* Another factor was that the expectation of life for women was now 71. As to the effect on the children of mothers going out to work she expressed the opinion that it was the neglectful mothers who did not go out to work. She was in favour of a married woman going out to work, if she has young children, as through her earnings she could then do much for them.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

EXAMINING JUSTICES

Mr. C. Royle (Salford, W.) asked the Secretary of State for the Home Department if he would introduce legislation to make it compulsory for examining justices to hold committal hearings not in open court.

Replying in the negative, the Secretary of State for the Home Department, Mr. R. A. Butler, said that examining justices were not required to sit in public, and while they normally did so, it was open to them to sit in private if, for example, they believed that to sit in public in a particular case would prejudice the ends of justice. He appreciated that the publicity which proceedings before examining justices received in certain cases might make it difficult to find twelve jurors who came to the case with fresh minds, but it was not necessarily impossible for them to consider the case, as they were required to do, solely on the evidence placed before them. His predecessors had taken the view that there were strong objections in principle to all proceedings before examining magistrates taking place in private, and he shared that view.

MAINTENANCE AND AFFILIATION ORDERS

Mrs. L. Jeger (Holborn & St. Pancras, S.) asked the Minister of Pensions and National Insurance the total sum paid in the last financial year by the National Assistance Board in allowances to unmarried mothers and their children in cases where affiliation orders were not being observed.

The Minister of Pensions and National Insurance, Mr. J. A. Boyd-Carpenter, replied that according to the National Assistance Board's latest Annual Report, about 16,000 unmarried mothers were receiving assistance at the latest available date at a cost of about £2 million a year. No information was available, however, as to the number of cases or amount of money within those totals which was the result of breaches of affiliation orders.

Mrs. Jeger: "Does the Minister's Department take any steps in cases where it is known that affiliation orders have been made, or is National Assistance freely given, as one would wish it to be from the woman's point of view? Does the Minister's Department do nothing as far as the actual court order is concerned?"

Mr. Boyd-Carpenter: "In the strict sense, my Department does not take steps, but there is a section of the National Assistance Act under which the Board can exercise some of the rights of the woman concerned in cases where an order has been made."

Mr. W. T. Williams (Barons Court) said that that had been a problem for decade after decade and the only sanction that the Government could apply was merely to send the person to gaol. He asked whether some alternative method of extracting the money from the person concerned could be made rather than merely sending the man to prison, which did not help the woman at all.

Mr. Boyd-Carpenter said that there had been one or two proposals in that direction. He agreed that the present law was not wholly satisfactory.

SHORT-TERM SENTENCES

In reply to another question from Mr. Hale, Mr. Butler said that during 1955, 13,244 men and 1,499 women sentenced to serve up to and including five months' imprisonment had been received into prison.

MAINTENANCE ORDERS BILL

Despite some opposition, the Maintenance Orders (Attachment of Income) Bill received a Second Reading without a division in the Commons.

Miss Joan Vickers (Plymouth, Devonport), moving the Second Reading, said that in hundreds of cases maintenance orders were not complied with and the applicant had to resort to National Assistance. The object of the Bill was to allow the woman to appeal to the court again when not less than four weekly payments were due, to ask for the payments to be deducted by whoever was paying the defendant. It would be possible under the Bill to take money even from the pensions of persons who had retired. Before making payments the employer was allowed to deduct 6*d.* on each one of the payments to cover his expenses.

The order would specify two rates. The first rate would be that at which deductions were made to satisfy the maintenance order as provided by the court. The second rate would be that below which the defendant's earnings were not allowed to fall, in order that he could keep himself and also any other dependant he might have by a second marriage. The present practice of paying the money into court was continued because it was important to ensure that there was no contact between the employer and the woman receiving the money.

The only person who could not come under the Bill would be the self-employed man. If the self-employed man did not make the necessary payments and went to prison, he was likely to lose his business or profession. So the danger of a self-employed man not keeping up maintenance payments was less than in the case of a man who had an employer.

The Bill would allow women who had illegitimate children to obtain their maintenance in the same way. It would also allow local authorities who had the care of children to obtain money from the parent responsible for paying.

Each year between 3,000 and 4,000 men went to prison rather than pay maintenance. The cost of keeping the man in prison was about £300 a year and the cost of maintaining his children, who often had to be put in the care of local authorities, might be between £8 and £13 a week each. In 1955, the ratepayers had to find £7¼ million, through the National Assistance Board, in respect of 70,000 deserted wives and children.

In Scotland, where there was the opportunity to arrest wages for one week, the number of men going to prison over a period of years varied between 10 and 34, as compared to three or four thousand in England and Wales. The procedure did not appear to have been the cause of any industrial unrest in Scotland or in other countries where a similar method was used. Some countries even deducted from a man's earnings if he did not pay his Income Tax or fines. In the Netherlands, a wife living with her husband could go to court if she thought he was not supporting her adequately. Deductions were made for various forms of debts and maintenance in Germany, Belgium and Jordan. Deductions were made in respect of maintenance, debts, taxes and fines in Denmark, Norway, Sweden, the Netherlands, New Zealand, and in New South Wales and Victoria in Australia. Maintenance was also deducted in certain states of the U.S.A. and in Ontario in Canada, and in Switzerland and France. In some of those

countries maintenance could be deducted in respect of relations other than wives.

Opposing the Bill, Mr. Ronald Bell (Bucks) said the proposal to attach wages had recently been rejected by the Royal Commission on Marriage and Divorce, and was not acceptable to the Trades Union Congress and the British Employers' Confederation. It would damage the employer-employee relationship, and a wife actuated by malice towards her husband was capable of doing great harm under the Bill. It would impose a considerable burden on employers, and a man had only to change his job to snap his fingers at the order. A man who was determined not to pay his wife would not be worried by the Bill. He urged the reform of the matrimonial jurisdiction of the lower courts because the bench could not discover in an hour or two who was responsible for the break-up of a marriage.

The Government's approval of the Bill was expressed by the Joint Under-Secretary of State for the Home Department, Mr. J. E. S. Simon, who said that its detailed provisions represented a scheme that was most suitable and reasonable in all the circumstances.

He said that the Royal Commission agreed with the majority of witnesses that magistrates' courts were well-situated to exercise matrimonial jurisdiction and should continue to do so. Regarding maintenance orders, it seemed to him that where the court had come to a decision in a conscientious attempt to do justice between the parties, it was intolerable that the decision should be set at nought by one of the parties. There had to be sanctions for the order of any court, and he thought the Bill's supporters had urged with some cogency that it was unreasonable to argue that a party might flout the decision of the court at the peril of going to prison but not at the peril of having his source of income attached in order to make the order effective.

The main argument against the Bill which impressed the Government was the desire of the trade unions that wages should be preserved inviolate from deductions. But however desirable it might be as a matter of general principle that a man's wages should not be attached, here the situation was slightly different because a man's wages constituted the fund to which a wife was primarily entitled to look for her support, and the maintenance of his family was normally a man's first charge on his income.

With regard to the argument that the Bill might upset the relations between employer and employee by bringing the man's private life into such relationship, it seemed to him that to send a man to prison was likely to upset the relationship still more seriously and to bring the domestic disagreements right into the forefront of the employer's notice.

It was hoped that the mere threat of attachment would in many cases encourage a man to honour his obligations. The Government recognised the objections put forward by both sides in industry and the possible difficulties. They were also aware that the Scottish system of arrestment of wages did not in practice cause the difficulties feared. Under the present system in England and Wales the only real sanction against a defaulter was to send him to prison, and that threw a financial burden on the public. We paid annually by way of National Assistance to separated wives, divorced women with children and unmarried mothers over £10 million a year.

There was also the pressure on our prisons, which were already over-full. Last month no fewer than 2,052 prisoners were sleeping three to a cell built to accommodate one. Yet about 5,000 men were sent to prison each year for wilful default of maintenance orders. One could not fail to be impressed by the futility and wastefulness of the whole operation. He did not suggest that attachment would prevent all those committals. There would always be the man who objected to paying on principle. But there was also the feckless type of man who was incompetent to manage his own affairs and drifted into prison under that procedure. They had to consider earnestly whether it was right to deny the courts an opportunity of making him pay instead of sending him to prison.

The Bill was read a Second time without a division and was committed to a Standing Committee.

MAGISTERIAL LAW IN PRACTICE

Daily Mirror. December 29, 1956

THEY'VE HEARD THEY CAN MARRY TODAY

Happy smiles appeared after the couple learned yesterday that they can wed today.

The couple are Audrey Whitlock, 19, *and R.A.F. Sergeant John Driscoll*, 20.

They got permission to marry from Bristol magistrates.

As both are under 21, *written consent would normally be required from both sets of parents.*

It was easy for John, who is home on leave from Allied Air Forces Headquarters in France. His parents at Grays, Essex, were pleased at the match and said "Yes" right away.

But it was more difficult for Audrey, who lives at Wellington Road, Filwood Park, Bristol.

Dad's "Yes"

Her father readily consented. But she could not trace her mother who is divorced from her father and married again.

"The only other thing to do was to get permission from the magistrates." Audrey said yesterday.

"We fixed the wedding for tomorrow, in the hope that everything would go right for us in court."

Everything did go right—and the first thing Audrey and John did after leaving the court was to send a telegram to Grays telling John's parents that the wedding was on.

Audrey and John will be married at Grays Register Office and will have a short honeymoon in London before John's leave ends early in the New Year.

In this case the report says the girl's mother could not be traced. She was, therefore, not a respondent residing within the jurisdiction of the Bristol magistrates' court. She was not a person who had refused consent, and upon whom a notice of the application could have been served under r. 4 of the Guardianship of Infants (Summary Jurisdiction) Rules, 1925. In our view the application should have been made to the High Court.

The effect of s. 3 (5) of the Marriage Act, 1949, as explained by *R.* v. *Sandbach JJ., ex parte Smith* [1950] 2 All E.R. 781; 114 J.P. 514, is that in consent to marry cases county courts and magistrates' courts have jurisdiction only in cases where a person refusing consent resides within their jurisdiction. In all other cases coming within s. 3 (1) of the Act application should be made to the High Court. (*See* an article, "Consent to Marriage. A Question of Jurisdiction," at 117 J.P.N. 819, and "But Miss 17 must wait," at 120 J.P.N. 61).

The parents in this case were divorced. If the custody of the girl had been committed to one of her parents the consent of the other would not have been required, unless custody was committed to one parent during part of the year and to the other parent during the rest of the year. (Marriage Act, 1949, sch. 2, para. 1 (*b*)).

The Yorkshire Post. January 12, 1957.

WITHDREW APPEAL AGAINST CONVICTION

Ordered to pay £10 costs

After being sentenced to one month's imprisonment by Sunderland magistrates in November for being drunk in charge of a child under the age of seven years, 49-year old Thomas Boyle lodged an appeal at Sunderland quarter sessions.

But the magistrates were told yesterday by Mr. J. A. Hanna, representing the chief constable, that a few days before the quarter sessions—on December 27*—Boyle withdrew the appeal.*

Mr. Hanna said that because Boyle had given notice of appeal the police had been involved in costs.

Counsel had been engaged to appear at the quarter sessions on behalf of the chief constable. Boyle, who was said to be residing in a Salvation Army Hostel, was ordered to pay £10 *towards the costs of the appeal.*

The chairman (Mr. S. Ritson) said: "You have put other people to a lot of trouble and the money must be paid when you come out of prison."

Under s. 85 (1) of the Magistrates' Courts Act, 1952, an appellant may abandon an appeal from a magistrates' court to quarter sessions by giving notice in writing, not later than the third day before the day fixed for the hearing of the appeal, to the clerk of the court against whose decision the appeal is brought. The clerk must thereupon give notice of the abandonment to the other party to the appeal and to the clerk of the peace. Any notice required by the section may be served personally or by registered post (r. 60).

The court against whose decision the appeal was brought may, on the application of the other party to the appeal, order the appellant to pay to that party such costs as appear to be just and reasonable in respect of expenses properly incurred by that party in connexion with the appeal before notice of the abandonment was given to that party (s. 85 (2) (*b*).) Such costs are enforceable as a civil debt (s. 85 (3)), that is by judgment summons under s. 73.

TREASURE TROVE

Fortuna, the Goddess of Luck, has suffered in this country more vicissitudes than any of her devotees could have expected. At common law no games were unlawful ; the earliest legislation (between 1388 and 1541), discouraging certain games, did so with the motive of encouraging the practice of archery. The first Sunday Observance Act, in 1625, prohibiting Sunday sports and pastimes, was the product of Puritan influence. So far there was some consistency about the trend of legislation ; but from the establishment of the Hanoverian Dynasty the principles were lost sight of in a welter of legalistic verbiage. In the century and a half between 1738 and 1895 Parliament declared illegal the so-called gambling games—ace of hearts, faro, basset, hazard, dicing, " roulette or roly-poly," and later *rouge et noir, baccarat* and *chemin de fer*—the three last Frenchified names indicate the source of the foreign wickedness so abhorrent to English virtue.

Another line of legislation—from 1853 onwards—penalized betting except at an approved " place " ; strangely, this legislative disapproval has always been limited to ready-money transactions ; there is (apparently) no vice in the use of the post, the telegraph or the telephone for the purpose. Lotteries, on the other hand, have been in disfavour, on and off, since 1698, when they were declared a public nuisance. This sweeping condemnation did not prevent the establishment of lotteries expressly authorized by statute ; and between 1709 and 1824 the Government itself raised large annual sums by this means. On this subject of lotteries there must be a real obsession in the Englishman's psychology, since in the eighteenth century alone no less than seven Acts were passed on the subject, and the nineteenth and twentieth centuries are not far behind. On the general question of wagers, particularly the invalidity of gaming contracts in civil law, the Gaming Acts of 1835, 1845 and 1892 are too well-known to demand more than a mention.

To the sociologist it must seem that this spate of legislation, extending over three centuries, is highly artificial, and that the indignation that opened the floodgates was synthetic and insincere. Its ethical motive is suspect, since it has permitted the avowed evils of gambling to flourish side by side with pains and penalties which are so trammelled by legalistic conditions that they almost invite evasion. In last year's Budget the institution of Premium Bonds (a State Lottery in all but name) provoked ecclesiastical censure ; there is strong opposition on the part of the moralists to going the whole hog and raising revenue by the sweepstake method, just as there was upon the institution of the Betting Tax in 1926. But no censor of morals cares, and no political party dares, to draw attention to the appalling fact that, after all this expenditure of time on debate, drafting and enforcement, about four-fifths of the population waste their leisure in " playing " the football-pools, instead of devoting themselves to active exercise, serious study or cultural pursuits. Nor has anybody yet been able to explain why it should be politically immoral (as well as politically inexpedient) to impose a heavy graduated tax (rising, say, to 80 *per cent.* on prizes exceeding £50,000) though it is (apparently) perfectly proper for the Post Office to live to a great extent on its immoral earnings from the poundage on postal orders which accompany the coupons.

Why the enormous profits which are made from this anti-social industry should go into private hands instead of Government coffers is a perennial puzzle to economists and sociologists alike ; if the naked intrusion of the Government itself into this rich field is too much for Puritanical make-believe, the device of the statutory corporation might be usefully employed. And to combat the near-illiteracy and the *panem et circenses* mentality in which the greater part of our population is gripped, a leaf might be taken out of the book of the Scandinavian States, where football-pools flourish as here but the profits, instead of enriching private pockets, are applied partly to the fostering of cultural activities, by the foundation of scholarships, assistance to exhibitions and museums, and subsidies to music, literature and art, and partly to the encouragement of participators in (not spectators of) sporting activities, the organization of ski-contests, the provision of playing-fields, and so forth. If, as seems to be tacitly recognized, gambling is an ineradicable vice, why not canalize the profits for the benefit of the community generally, that out of evil good may come ?

It was not for nothing that the Goddess, known to the Romans as Fortuna, and as Tyche to the Greeks, was represented in art with the attribute of a ball, symbolizing the revolutionary mutability of fortune. Two recent news-items illustrate, the one in a bizarre, the other in a macabre manner, what this mad world is coming to. A correspondent in Ipswich has reported to *The Times* the winning of a £30,000 prize in the Pools by a voluntary patient in a mental hospital. The winning line was not entirely his own work ; there was collaboration with another patient in the same ward. " Blind Fortune still bestows her gifts " said Ben Jonson " on such as cannot use them."

The other item comes from Italy. A stonemason of a small town, in the neighbourhood of Florence, had for years been " playing " the football pools. Early in January he filled in and sent off his weekly coupon, as usual ; but the same day he was killed in an accident on his way to a football-match. After the funeral his son, who had helped the deceased to complete that week's entry, discovered that the forecasts it contained were correct, and that their joint effort was entitled to a prize of £10,000. Then, and only then, was it realized that the deceased had kept the necessary evidence on his person, and that it must have been buried with him. This episode seems at first sight to illustrate Edward Fitzgerald's stanza from *Omar Khayyam:*

> " And those who harvested the Golden Grain,
> And those who flung it to the Winds like Rain,
> Alike to no such Aureate Earth are turn'd
> As, buried once, Men want dug up again."

The parallel, however, proves to be illusory, for the family have applied for an exhumation order.

A.L.P.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Tuesday, February 26

PUBLIC TRUSTEE (FEES) BILL—read 3a.

Friday, March 1

LEGITIMATION (RE-REGISTRATION OF BIRTH) BILLS—read 2a.

NOTICES

The next court of quarter sessions for the borough of Southend-on-Sea will be held on Monday, March 11, 1957.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Gaming—*Small Lotteries and Gaming Act*, 1956—*Small gaming party.*

I shall be obliged by an opinion as to whether an offence is committed in the following circumstances:—

The village football club (registered with the local authority under the Small Lotteries and Gaming Act, 1956) wish to hold a small gaming party.

They intend to charge 1*s.* entrance fee and the game to be played is "Housey Housey." Each person is given a card with 12 numbers thereon between 1 and 90. Numbered tokens 1 to 90 are placed in a bag and taken out one by one and numbers called out. The first person to get 12 numbers on his card wins the "house." It has been a practice to charge a fee for each card and give a prize for each "house," but in order to try to comply with the Act it is now proposed to charge only one entrance fee. Several "houses" will be run at one meeting and it is proposed to give only one prize at the end of the meeting to the person who has won most "houses." The prize will not exceed £20. The proceeds are in aid of the football club and the only expenses will be a small charge for the use of the hall. The intention is to run this game each night. FORTHA.

Answer.

We think that a small gaming party run on the lines proposed comes within the provisions of the Act.

2.—Highways—*Passing of cattle—Mud and excremental matter on surface.*

This is an agricultural and dairying county, in which the moving of cattle from one field to another often means crossing a county road, or even driving a herd along a county road so as to reach the next field. Not only do the cattle bring out of the fields a good deal of mud on their feet, which comes off on the metalled roadway, but they also walk or are driven along the grass verges from which they pick up more mud, which is again deposited upon the metalled surface. Further, dung is dropped upon the metalled surface. Sections of the county roads become much fouled with mud and droppings.

The county council as highway authority are under a duty to do such cleansing as is necessary for the maintenance in repair of the highway and in the interests of road safety. Beyond that any cleansing is the duty of the rural district council. Complaints are received from farmers (generally the owners of the offending cattle) requiring the county council road men to come and clean up after their cattle; the county council feel that the farmers are unfairly placing an undue burden upon the county roadmen and also upon the cleansing authority.

This problem appears to be one to which there is no clearcut answer, and it would be appreciated if you would indicate what remedies if any are available (*a*) to the highway authority and (*b*) to the cleansing authority. P. JOHNIAN.

Answer.

The highway exists for animals not less than motor cars, and there is no remedy against the owners of the animals. *See* answers at 109 J.P.N. 538; 115 J.P.N. 477 and 624.

3.—Housing Act, 1936—*Closing order—Tenant in occupation—Liability of lessor.*

I should be pleased to have your opinion on the following:—

Where a local authority have taken action under s. 11 of the Housing Act, 1936, they may in certain instances, instead of making a demolition order, make a closing order under s. 10 of the Local Government (Miscellaneous Provisions) Act, 1953. A view has been put forward to this council that should a closing order be made on an occupied house the owner would then be committing an offence if the tenant was in occupation when the order became operative. PIRISK.

Answer.

This turns on s. 14 of the Act of 1936. The owner is not "using" the premises, and we do not think he is liable for "permitting," if he gives a notice to quit to the tenant; we suggest that he would be well advised to do this, and to inform the council that he has done so.

4.—Husband and Wife—*Parties continuing to reside together after order made—Subsequent divorce for adultery—Revival of order.*

I should be most grateful to you for your advice on the following facts:

On August 3, 1950, the wife obtained an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, on the grounds of persistent cruelty and wilful neglect to maintain herself and seven children of the marriage. The order committed to her the custody of all these children, awarding maintenance of 5*s.* per week for each, plus £1 5*s.* per week for the wife.

On the day the order was made, the parties were living together as husband and wife, and continued to do so until June, 1953, during which time, on March 20, 1951, another child of the marriage was born. On June 15, 1953, the husband was convicted and sentenced to five years' imprisonment for incest with one of the seven children mentioned above.

On May, 1, 1956, a decree *nisi* dissolving the marriage was granted to the wife on the ground of the husband's incestuous adultery, committed, according to the petition from June 1, 1952 until January 31, 1953. This decree was made final and absolute on June 16, 1956.

The wife's petition asked, *inter alia*, for the custody of four of the children referred to above (three of them had already attained the age of 16 years), and the child born on March 20, 1951 (who was not, of course, included in the order made on August 3, 1950). The decree, however, awarded her the custody of only the last mentioned child.

No payment has ever been made under the order of August 3, 1950, nor, until a few weeks ago, have any proceedings been brought to enforce it. The husband has now been discharged from prison, and is living with his father and the wife seeks to recover the arrears which amount to something over £800, and there is, in fact, a complaint for this purpose before my court (which made the order on August 3, 1950). These proceedings have brought to light the full circumstances as set out above.

Section 1 (4) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, seems to me to render the order of August 3, 1950, unenforceable, certainly in respect of the period up to the date of the husband's release from prison, and, I rather feel, also as far as the future is concerned. This is the view taken by the solicitor who acted for the wife in the divorce proceedings and that is why, so he tells me, he included in the petition a prayer for a new order for the custody of all the children named in the order of August 3, 1950, except those who had reached the age of 16 years. The wife's solicitor tells me, however, that the learned Commissioner who heard the petition held that order to be still in force and, therefore, that the question of the custody of those children could not arise on the petition. This decision was given notwithstanding the fact that, the learned Commissioner was informed not only of the making of the order, but of the fact that the parties had continued to live together thereafter.

The only sources of information open to me concerning the proceedings before the learned Commissioner are the wife's solicitor, the petition, the decree and the notes of the shorthand writer who attended the hearing of the petition. I have obtained a transcript of the hearing of the petition, but no mention is made therein of any judgment concerning the order of August 3, 1950. Nevertheless, the wife's solicitor is quite sure that the point was included in the judgment as he made a note of it at the time.

The questions upon which I would appreciate your assistance are these:

1. Am I correct in believing that, without more official information about the judgment, *i.e.*, a verbatim report taken at the hearing, I should advise my justices that their order has ceased to be of effect by virtue of s. 4 of the Act of 1925, and that, by virtue of the same section, the alleged arrears cannot be recovered ?

2. Even if satisfactory evidence is forthcoming that the learned Commissioner held the order to be still in force, would such judgment be binding on my court and justify their use of powers of enforcement in case of future default in making payments under it ?

3. If the order is to be regarded as of no effect, is this a proper case for the wife to ask for it to be revived ? Or could she apply for a new order, this time under the Guardianship of Infants Acts ?

You will have gathered that the crux of this problem, as I see it, is that my justices naturally wish to avoid giving any decision which runs counter to a judgment on the same point delivered by the High Court. Yet, with all respect to the learned Commissioner, s. 4 seems conclusively clear that the order is at an end and has been since three months after it was made. HALFER.

Answer.

The implication from the terms of the decree is that the learned Commissioner took the view that the order was still in force. We would respectfully suggest that this cannot be so as, after three months' continued residence together, the order ceased to have effect, *i.e.*, it must then be regarded as never having been made. It is possible, however, that the court merely meant that the order could be revived and that that was the wife's remedy with respect to the other four

children under 16. The terms of s. 53 of the Magistrates' Courts Act, 1952, are wide enough to allow a divorced woman to revive an order and, while the order ceased to have effect after three months, we think it could be argued that, prior to that, it was an order made by a magistrates' court and therefore capable of revival.

We would answer the questions as follows:

1. We think the order has ceased to be of effect. Even if it were still in force, it is difficult to see how any court could enforce all the arrears.

2. If, in fact, the High Court held that the order was still in force, we think that the justices could enforce arrears in case of future default in payment.

3. The wife could ask for the order to be revived but, in view of the divorce, we think it preferable that she should apply for new orders under the Guardianship of Infants Acts.

5.—Justices' Clerks—*Accounts—Record of remitted fees.*

Home Office Circular No. 61/1953, which deals with the Justices' Clerks (Accounts) Regulations, 1953, reads as follows in para. 21:

"The obligation to keep a remitted fees book will continue in consequence of the provisions of s. 12 of the Criminal Justice Administration Act, 1851; but with the revocation, from June 1, 1953, of r. 14 of the Summary Jurisdiction Rules, 1915 (and form 91), the form of the book will cease to be prescribed. It is not at present proposed to prescribe any form for this account, but it will be convenient to retain the existing form in use."

The statement contained in the above paragraph appears to overlook the fact that s. 132 and sch. 6 of the Magistrates' Courts Act, 1952, repealed s. 12 of the Criminal Justice Administration Act, 1851, on June 1, 1953. Section 113 of the Act of 1952 deals with the remission of fees, but does not require a remitted fees book to be kept.

The Justices' Clerks (Accounts) Regulations, 1953, do not appear to make any reference to a remitted fees book and neither para. 1 nor 2 of those regulations appear to be wide enough to require a remitted fees book to be kept; that this is so seems confirmed by the view expressed in Home Office Circular No. 61/1953, *supra*, that the statutory requirement to keep the book flows from the requirements of s. 12 of the Act of 1851, not from the regulations of 1953.

The present position appears to be that there is neither a statutory requirement to keep such a book nor is the form of any such book now prescribed. It is difficult to understand the reasons for this in view of the practical advantage of keeping such a book.

Your observations on the present position would be appreciated.

JEWSIR.

Answer.

The Justices' Clerks (Accounts) Regulations, 1953, came into force on April 1, 1953, and between then and May 31, 1953, it was true to say that s. 12 of the Act of 1851 required the keeping of a remitted fees book. Since June 1, 1953, however, there has been no such obligation, s. 12 having been repealed as stated in the question.

We agree that from the practical point of view there is a great deal to be said for continuing to keep a record of remitted fees on the old form 91.

The only obligation which we think is imposed by reg. 2 of the 1953 Regulations, in this matter, is to keep a written account of any such remitted fee as the clerk may pay to any person entitled to have it repaid to him.

6.—Rating and Valuation—*Disused property comprising separate lodge—Lodge inhabited by caretaker—Whether lodge is "occupied."*

The question of rates in respect of a house held by a caretaker appears to be settled fairly well in certain circumstances: the position is stated in *Ryde on Rating* and *Halsbury*. This council, however, has made a demand in respect of premises occupied by a caretaker, which were formerly an isolation hospital. These are now empty except that the lodge by the gate is occupied by a family, one of whom acts as caretaker for the premises. The lodge is rated separately from the other buildings and my council have demanded rates from the occupier. The occupier states that he is entrusted as a full-time caretaker and holds all the keys to the buildings, to enable him to show appointed people round, and he has been detailed to keep trespassers out. The council contend that the occupier has the lodge merely as a dwelling, and that his duties of caretaker extend only to the unoccupied buildings on the site and the grounds surrounding them. The authorities support the view that neither the owner nor the occupier is rateable where the occupier acts as caretaker in respect of premises, part of which he occupies. Is the council's contention in this case correct ?

CESUN.

Answer.

Occupation for rating is a question of fact. On the facts before us, including the separate rating of the lodge and the nature of the premises, we consider that this person is in rateable occupation of the lodge, notwithstanding that he lives there by reason of his duty as caretaker of the whole property.

7.—Road Traffic Acts—*Construction and Use Regulations—Marking weight on trailer with overrun brakes.*

With reference to reg. 62 of the Motor Vehicles (Construction and Use) Regulations, 1955, is it correct to assume that if a trailer is not fitted with overrun brakes or is not fitted with any brakes at all, irrespective of its weight, there is no obligation on the part of the owner to cause the unladen weight to be marked thereon ? IBOWN.

Answer.

We agree.

8.—Road Traffic Acts—*Driving licence—Proof of issue by certificate signed by an officer of the licensing authority.*

With reference to P.P. 8, at 120 J.P.N. 765, I will commend to the questioner the procedure current in the writer's area, which has worked successfully and overcomes the necessity of bringing witnesses from afar just to prove a summons for unlicensed driver.

A certificate has been drawn up showing the current and previous licences held by the defendant, which is completed by the person having control of the records of driving licences at the appropriate county council. Having given evidence of the offence, the officer prosecuting then proffers the certificate in proof of the fact that the person was unlicensed at the time of the offence.

As is well known, the authority for supplying such information to police is contained in reg. 20 of the Motor Vehicles (Driving Licence) Regulations, 1950, and s. 14 of the Evidence Act of 1851 permits such documentary evidence to be accepted by a court.

Although this method has not as yet been used to prove a case where a person was the holder of a certain type of licence, I can see no reason why any objection should be made to this course. What are your views ? J. ROBERT.

Answer.

The prosecution do not need to prove affirmatively that a person has *no* driving licence (*John* v. *Humphreys* [1955] 1 All E.R. 793; 119 J.P. 309).

We know of no decision or authority on the point, but we do not think that the Register of Licences is a public document within the definitions given by the Judges in various cases, starting with *Sturla* v. *Freccia* (1880) 5 App. Cas. 623 at p. 643, *i.e.*, a document made by a public officer *for the purpose of the public making use of it and being able to refer to it*. We think, therefore, that s. 14 of the Evidence Act, 1851, does not apply to authorize the production of the certified copy as suggested in the question.

COUNTY BOROUGH OF BURTON UPON TRENT

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor in the Town Clerk's Office at a salary in accordance with N.J.C. scale (£743 2*s.* 6*d.* to £994 5*s.* per annum) dependent upon when the applicant was admitted.

The appointment will be subject to the provisions of the National Scheme of Conditions of Service and the Local Government Superannuation Acts, to termination by one calendar month's written notice on either side and to the passing of a medical examination.

Applications, in envelopes endorsed "Assistant Solicitor," and giving details of present and previous appointments, age, education, qualifications and general experience, together with the names and addresses of two persons to whom reference may be made, should reach the undersigned not later than March 22, 1957.

Canvassing either directly or indirectly will be deemed a disqualification.

H. T. MEADES,
Town Clerk.

Town Hall,
Burton upon Trent.
March 1, 1957.

URBAN DISTRICT COUNCIL OF FARNBOROUGH

Assistant Solicitor

APPLICATIONS are invited for the appointment of an Assistant Solicitor, at a commencing salary within the appropriate Scale of the National Salary Scales (£743 2*s.* 6*d.*—£994 5*s.* per annum), according to the degree of experience of the successful candidate.

Applicants should have good conveyancing experience. Local Government experience is not essential but preference will be given to candidates having such experience.

The appointment will be subject to the provisions of the National Scheme of Conditions of Service and the Local Government Superannuation Acts, 1937–1953. The successful candidate will be required to pass a medical examination.

Applications, endorsed "Assistant Solicitor," giving details of age, date of admission, particulars of experience, qualifications and the present position held, together with names and addresses of two referees, should be forwarded to the undersigned not later than March 16, 1957.

D. STUART JONES,
Clerk of the Council.

Town Hall,
Farnborough,
Hants.

GLOUCESTERSHIRE MAGISTRATES' COURTS COMMITTEE

BERKELEY, DURSLEY AND WHITMINSTER DIVISIONS

SENIOR Assistant to Justices' Clerk required. Applicants must have thorough knowledge of work of Justices' Clerk's office including collecting and accounting duties and be capable of taking Courts if necessary. Salary Grade "B" of Senior Clerks' Division of Joint Negotiating Committee for Justices' Clerks' Assistants. Appointment will be subject to the National scheme of conditions of service, and terminable by one month's notice on either side.

Post is superannuable and subject to medical examination.

The successful applicant must possess a motor vehicle for use in connexion with his duties for which a travelling allowance will be paid.

Applications, stating age, qualifications and experience, together with names and addresses of three referees, to be received by the undersigned not later than March 16, 1957.

GUY H. DAVIS,
Clerk of the Committee.

Shire Hall,
Gloucester.